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Weican Null Meng

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ZHANG ZIYI, an individual,

Plaintiff,

VS.

CHINA FREE PRESS, INC., a North Carolina non-profit corporation doing business as BOXUN NEWS; WEICAN NULL MENG, an individual known as WATSON MENG and also WEICAN "WATSON" MENG; DOES 1-25, inclusive,

Defendants.

Case No. CV12-5216-DMG (PLAX)

**DECLARATION OF YE "KEN"
WANG IN SUPPORT OF
DEFENDANT'S SPECIAL
MOTION TO STRIKE UNDER
CALIFORNIA CIVIL
PROCEDURE CODE § 425.16**

I, Ye "Ken" Wang, declare under penalty of perjury pursuant to the laws of the United States that the following are true:

1. I have personal knowledge of the facts set forth below, and I am competent to testify regarding these facts and statements. I declare that all statements made herein of my own knowledge are true.

1 2. I am a Chinese citizen and resident of the United States, specifically
2 the State of Pennsylvania.

3 3. I hold a Bachelor's of Engineering degree in Telecommunication
4 Engineering and Intellectual Properties Laws from Shanghai University in 1996.

5 4. As a consequence of holding this degree, I passed the bar examination
6 and was entitled the qualification to practice law in China by the Ministry of
7 Justice of China. But I did not practice law prior to moving to the United States
8 due to personal career choice.

9 5. Since residing in the United States, I have earned a Masters in
10 Business Administration in Information Systems and Finance from the Washington
11 State University in 2004.

12 6. I continued my education at the Washington State University, earning
13 a Ph.D. in Business Administration from that institution in 2008.

14 7. I am presently an Assistant Professor in the Division of Management
15 and Education at the University of Pittsburgh's Bradford campus since 2008.

16 8. As an assistant professor, I teach a variety of classes to students,
17 including those pertaining to innovative technologies, electronic commerce,
18 business intelligence, system analysis and design, and application development.

19 9. Prior to teaching at the University of Pittsburgh's Bradford campus, I
20 also taught undergraduate and graduate students at the Washington State university
21 for three years.

22 10. In addition to my teaching, I have published numerous refereed (i.e.,
23 peer-reviewed) articles in research journals, and given presentations at similarly

1 refereed conferences. I also contributed a chapter regarding the support and use of
2 knowledge networks to The Encyclopedia of Knowledge Management (2004).

3 11. Additionally, I am or have been a member of the Association of
4 Information Systems (AIS), the Academy of Management (AOM), the Decision
5 Sciences Institute (DSI), and the Institute for Operations Research and the
6 Management Sciences (INFORMS).

7 12. My academic experience and accomplishment has informed me of
8 what is required to produce credible, reliable research and repeatable findings. I
9 have applied these principles to my other research, which focuses on comparative
10 legal research – namely, comparing the legal systems of the United States and
11 China.

12 13. As a Chinese citizen with Chinese legal training, and the ability to
13 practice law in China if properly barred, I am innately familiar with the principles
14 and operations of the Chinese legal system.

15 14. Additionally, as a resident of the United States for ten (10) years, I am
16 familiar with the general principles of the American legal system; additionally, I
17 conduct research into the American legal system, such as reading court decisions
18 and articles about the operations of America's courts and legislature written by
19 practitioners, observers and academics.

20 15. I use this research to write a legal analysis web log, or "blog," I
21 maintain at <<http://blog.sina.com.cn/ykenwang>>. On that site, I write in Chinese
22 about developments in the United States legal system and frequently compare them
23 to the Chinese legal system in order to inform others of the differences between the
24

1 two, particularly in the area of constitutional human rights.

2 16. I have been writing this blog since February 2010.

3 17. Additionally, I author columns about the United States and Chinese
4 legal system for <163.com> (namely NetEase, a subsidiary controlled and operated
5 by NetEase, Inc. listed on Nasdaq under the symbol NTSE), one of the major
6 portal websites and online communities in China that discusses a broad variety of
7 issues. Two of my columns on legal issues can be accessed at

8 <<http://view.163.com/12/0703/08/85FOHDLN00014MO9.html>> and

9 <<http://view.163.com/12/0703/08/85FOHDLN00014MO9.html>>.

10 18. In addition to online portal websites and communities, I also author
11 columns for a newspaper Southern Metropolitan Daily, which is popular in
12 southern China and used to be known for its dissenting political views.

13 19. A number of my articles addressing sensitive subjects, including but
14 not limited to the comparison of the United States and Chinese constitutional
15 rights, have been removed from my blog, <163.com>, and the online version of
16 <Southern Metropolitan Daily> due to censorship by the Chinese authorities. For
17 example, the Chinese government ordered the removal of my recent column for
18 Southern Metropolitan Daily about the United Staes Supreme Court's ruling in
19 *United States v. Alvarez* after its publication because of its discussion advocating
20 American-style freedom of speech.

21 20. Based on this experience with both the Chinese and United States
22 legal systems and knowledge of the facts of this case, I am able to make the
23 following conclusions.

1 21. First, the anonymous sources for Boxun news are, if identified, in very
2 grave risk of harm to their liberty and even their lives.

3 22. While China does have laws ensuring a level of due process, they are
4 unevenly enforced, with disparities in due process depending on the crime charged
5 and the politicians in charge of the province and even city where an arrest is made.
6

7 23. Because the information provided to Boxun by its currently
8 anonymous sources causes China to lose face by virtue of the Bo Xilai scandal as
9 reported by the international and United States media, these sources face a distinct
10 risk of receiving minimal, if any, due process protections if identified.
11

12 24. If the anonymous sources Meng relied on in his report on Plaintiff are
13 identified, it is all but certain they will be arrested – at minimum. China has a very
14 vague definition of what constitutes “state secrets,” and any person who speaks ill
15 of the government, even in the form of an opinion or true statement, may be
16 charged with unlawfully sharing state secrets.
17

18 25. In 2003, Chinese lawyer Zheng Enchong was convicted of “unlawful
19 providing state (national) secret to foreign bodies,” a criminal offense in China,
20 and sentenced to three years in prison by a court in Shanghai.
21

22 26. The secret that government authorities accused Zheng Enchong of
23 providing to a United States-based organization was merely a news report on a
24 forced demolition conflict between some local residents and the government
25 authorities. Such information was deemed to be state secret by the court because it
26 had been mentioned in an internal report within Xinhua News Agency, a news
27 service owned and operated by the Chinese government.
28

1 27. Even though Zheng acquired the information underlying his
2 conviction from a different source, he was nevertheless accused of leaking state
3 secret on the ground that such information was concerning “national security and
4 benefits.” There are controversies in China’s state secret laws that the status of a
5 state secret itself is a state secret so that one may be accused and convicted of
6 leaking state secret without knowledge of it being a state secret.

7 28. If the anonymous sources are arrested and tried for such distribution
8 of state secrets, their proceedings will be held in secret; there will be no public
9 records and the accused will not be entitled to trial by a jury. In addition, the
10 appraisal of state secrets is an exclusive power by the National Secret Bureau,
11 whose conclusion is to be used as evidence and cannot be challenged at court.

12 29. Still other hallmarks of American due process will be lacking in any
13 Chinese prosecution of Boxun’s anonymous sources. If charged and identified, the
14 sources will not be allowed to cross-examine witnesses who testify against them.

15 30. While the accused may be appointed an attorney by the Chinese
16 government, the state-appointed attorney may not be competent or effective, and
17 may not be motivated to effectively represent the client.

18 31. Finally, although these cases will be decided by a group of judges, the
19 accused may not be assured of a fair ruling, as the judges presiding over the cases
20 are subject to instructions from other powers, such as the head of the court, the
21 judging committee of the court (a committee made up of senior judges in charge of
22 “important, complex, and difficult cases”), and most importantly the Politics and
23 Law Committee (“PLC”) of the Communist Party.

1 32. The PLC does not enjoy any powers under written law, but the body's
2 *de facto* power gives it jurisdiction over judges, prosecutors, police, and other law
3 enforcement agencies and how they are treated by the Party. Thus, the court may
4 have to ask for opinions from the PLC before a case enters public hearing until it is
5 finally ruled.
6

7 33. Such involvement by the PLC severely undermines the court's
8 independence and neutrality in disputes, particularly those with a political
9 dimension – including the potential cases Meng's anonymous sources would face
10 if identified in China.
11

12 34. All of the foregoing assumes, perhaps charitably, that Boxun's
13 anonymous sources would receive a trial and any form of due process after being
14 identified.
15

16 35. As seen from the nature of the Bo Xilai affair itself, which involves
17 the mysterious death of an English businessman, with which Mr. Bo may have
18 been complicit or even an accomplice, there remains a significant amount of
19 opacity with respect to China's legal system.
20

21 36. Because of the inconsistency of how China's laws are applied and
22 enforced, there is a likelihood that any anonymous Boxun source who is identified
23 would not be arrested and put on trial, but be retaliated and discriminated against in
24 future career development or education opportunities, or receive threats against
25 their family members, or in most extreme cases be attacked or even killed.
26

27 37. While the Chinese government has taken steps to improve its
28 administration of justice, and more aggressive steps still to improve its image on

1 human rights issues, it still possesses a poor track record for recognizing various
2 freedoms.

3 38. I am aware that other Boxun journalists have been imprisoned for
4 their actions in support of the publication.

5 39. I am also aware of the Chinese government's actions with respect to
6 the Tienemen Square incident of – which the Communist Party now denies any
7 wrongdoings – and the Communist Party's aggressive crack-down on religions that
8 are not directly under state control, including the underground Christian churches
9 that do not wish to join the government-controlled official churches.

10 40. On that basis, I do not believe that any anonymous Boxun contributors
11 would receive any due process if identified, and would be charged with overly
12 broad crimes – crimes they did not commit.

13 41. This manifest lack of any due process guarantees further leads me to
14 believe that there is an unacceptable risk that any confidential Boxun sources who
15 are identified will face great bodily harm, or even death, at the direction of the
16 Communist Party.

17 42. I have not served as an expert witness in the last four years. As my
18 compensation for providing expert testimony in this matter, I am charging
19 Defendant Weican Null “Watson” Meng \$200.00 per hour.

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22 //

23 I declare under penalty of perjury that the foregoing is true and correct to the

1 best of my knowledge.

2

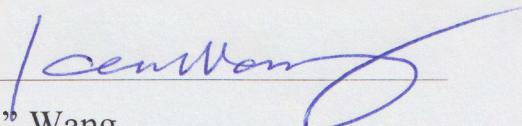
3 EXECUTED this August 15, 2012 in BRADFORD, Pennsylvania

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8 Ye "Ken" Wang 

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